

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning of Video Programming)	CG Docket No. 05-231
)	
Telecommunications for the Deaf, Inc.)	
Petition for Rulemaking)	

REPLY COMMENTS OF THE



NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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The National Cable & Telecommunications Association (“NCTA”), by its attorneys,
hereby submits its Reply Comments in the above-captioned proceeding.

INTRODUCTION

NCTA’s initial comments urged the Commission to refrain from adopting burdensome new captioning obligations. NCTA agreed that in some cases deadlines for responding to complaints could be shortened. But NCTA objected to other proposals to impose onerous monitoring, reporting, and paperwork requirements. Comments filed in this proceeding show why FCC rules would be both unnecessary and undesirable. The Commission should not upset the careful balance embodied in its regulations today.

DISCUSSION

I. THE FCC SHOULD NOT REGULATE NON-TECHNICAL QUALITY

The cable industry shares the interest of its deaf and hard of hearing customers in high quality captioning. Cable networks, program producers, and captioning agencies filing in this proceeding confirm that assurances of caption quality are typically covered by contracts between

the parties. In addition, cable networks devote internal resources to ensuring that captions are accurate.

HBO, for example, describes its extensive quality control measures. The network ensures quality captioning both through contracts with outside vendors and through its own in-house captioners.¹ The Joint Comments of a diverse group of cable program networks also highlights a number of quality control measures.² As they describe: “The Networks recognize that captions are an integral part of their programming, and they are ‘going the extra mile’ to ensure captions are accurate, complete and reflective of the investment the Networks have made in their programming. In addition, as the Commission anticipated in 1997, the Networks’ contracts with captioning agencies generally require that captions have a high level of accuracy.”³ Networks have demanded that captioners that fail to live up to that standard be replaced.⁴

Captioning organizations’ comments similarly confirm that caption quality assurances are routinely part of their contractual arrangements with cable program networks.⁵ And the Motion Picture Association of America (“MPAA”), whose members provide significant amounts

¹ Comments of Home Box Office at 5 (“HBO Comments”).

² Comments of AZN Television, Casino & Gaming Television, Comcast Sportsnet (Mid-Atlantic), Comcast Sportnet (Philadelphia), E! Entertainment Television, G4-Videogame TV, The Golf Channel, Inspirational Life Television, The Inspiration Network, Outdoor Life Network, Style Network and TV One at 17-19 (“Joint Comments of Cable Networks”).

³ Id. at 18 – 19.

⁴ Id. at 19.

⁵ See, e.g., Comments of Media Captioning Service at 8 (“MCS Comments”) (“MCS, in all its captioning agreements/contracts executed over the past 17 years, has addressed accuracy requirements with our clients.”); Comments of Caption Colorado at 5 (“all of our contracts with television stations and networks for realtime closed captioning services offer a guarantee that our services will be performed ‘in a good and workmanlike fashion in accordance with generally accepted industry standards for accuracy and timeliness.’ We also provide our customers with a copy of the specific formula we use for evaluating the accuracy and quality of our captioning within industry standards. If we fail to meet those standards our agreement allows our customers to terminate our contract.”)

of programming to cable networks, explains that MPAA's member companies "currently make extensive contractual arrangements with their captioning providers to ensure high-quality captioning."⁶ These comments confirm the FCC's belief that contractual arrangements with captioning agencies will ensure high quality captioning. And they contradict the assertions of some commenters that the marketplace is not working to address quality issues.

Even with these quality assurances, of course, captioning is not always a perfect process. This is especially true for captioning of live programming. Some commenters have raised concerns about mistakes in real-time captioning.⁷ Since real-time captioning is inherently not error-free, these complaints are understandable. However, a governmental solution to this perceived problem is not obvious from a review of the comments. In fact, the comments reveal that even determining whether captioning is "error-free" is itself a subjective judgment not conducive to regulatory oversight.

The National Court Reporters Association ("NCRA"), for example, explains that "it would be extremely difficult to develop an accuracy standard that could be agreed to by the captioning industry as a whole."⁸ A review of the comments reveals why. Several commenting

⁶ Comments of MPAA at 3.

⁷ While several commenters make reference to off-line captioning, no commenters demonstrate any issue regarding the accuracy of captions on prerecorded programs. Some-times tight production schedules necessitate using real-time captions for prerecorded programs; other times, last minute changes cannot be reflected in the captions without missing a scheduled air time for a program. FCC regulation to address these anomalous situations is unnecessary and unwarranted, and could potentially interfere with cable networks' programming judgments. Congress did not intend captioning regulation to hinder programming decisions. See H.R. Rep. No. 458, 104th Cong., 2d Sess. 183 (1996) ("the Commission shall balance the need for closed caption programming against the potential for hindering the development and distribution of programming.")

⁸ Comments of the National Court Reporters Association at 4 ("NCRA Comments"). NCRA instead proposes that "perhaps effort also should be focused on the development of guidelines or best practices that concentrate on the completeness, accuracy, and timeliness of the captions."

captioning organizations show varying perspectives on how to measure real-time captioning accuracy.⁹

NCRA, which is developing its own best practices for qualified captioners, comments that even “trying to define an error could be problematic.”¹⁰ Caption Colorado explains that standards for real-time captioning may be “too difficult to define, apply, and enforce due to the very nature of real-time captioning which requires captioners to make many subjective judgments and to use many industry accepted skills which are often difficult to track and that often result in what might be considered an error in offline captioning and other environments but should not be in real-time captioning.”¹¹ And different types of programs may require different judgments about how much verbatim information to include, as National Captioning Institute explains:

just as programming is varying and diverse, the captioning of such programming is not identical for all programming – for example using a verbatim (or near verbatim) style of captioning for a rapid-fire talk program with several speakers often speaking over each other (so several persons are speaking at the same time), the real-time captioner must make decisions when writing the live captions of what audio is captioned and what remains uncaptioned when the captioner must move onward to keep in synch with the pace of the program....¹²

⁹ For example, some captioners do not believe that a verbatim transcription is required in order to be accurate. NCRA, for one, favors audience comprehension over 100 percent verbatim accuracy. *Id.* MCS, a captioning agency, proposes that guidelines establish 95% “verbatim accuracy for real time captioning.” However, even MCS would only propose counting as errors “misspelled words and missing words which affect contextual accuracy.” Comments of Media Captioning Services at 9 (“MCS Comments”). MCS proposes a rule defined in terms of “functional equivalency,” which MCS considers to be 95% verbatim accuracy for real-time captioning. *Id.* at 8. The Accessible Media Industry Coalition argues that sometimes words can be left out without affecting accuracy: “if a missing word or spelling mistake does not interfere with achieving the mission, then it is insignificant. On the other hand, presenting every word correctly spelled does not constitute good quality if the viewer is unable to read it because timing is poor or it is presented in a way (such as against a full screen of graphics) that renders the caption unreadable.” Comments of the Accessible Media Industry Coalition at 5 (“AMIC Comments”).

¹⁰ NCRA Comments at 5.

¹¹ Comments of Caption Colorado at 3. Caption Colorado argues that non-technical quality standards “should be adopted for both offline and real-time captioning but that such standards should not be used as a basis for fines or other time consuming or expensive response or reporting requirements with respect to real time captioning.”

¹² Comments of National Captioning Institute at 3 (“NCI Comments”).

Under these circumstances, government adoption and enforcement of quality standards appears particularly inappropriate. The FCC was right to be wary previously of wading into this thicket, recognizing “it would be difficult to establish standards in this area.”¹³ Given the variation in acceptable methods of captioning that the record shows, and the lack of objective standards for measuring accuracy, the Commission should remain cautious about stepping in to establish any specific quality rules.

This caution is particularly warranted because the record suggests that several negative effects could flow from adopting any such quality rules, especially if coupled with the monitoring, reporting and punitive measures that TDI proposes. Significantly increased captioning costs are one inevitable consequence. Caption Colorado suggests that if standards were coupled with significant reporting and proof of performance requirements, real-time captioning costs could double.¹⁴ Most immediately, these consequences would be felt by those program networks least able to afford to caption, as the Joint Comments of Cable Networks explain. For example, AZN Network projects that if, as it estimates, its captioning costs increased by at least 50 percent, “AZN, which already spends more than two percent of its gross revenues on captioning expenses ... would have to reduce some of its captioning or use funds for captioning that currently are budgeted for the creation and acquisition of programming.”¹⁵ As those comments point out, any additional costs would be coming at a time when cable networks’ captioning costs already are set to rise to achieve the 2006 higher captioning benchmarks.

¹³ Report and Order, 13 FCC Rcd. 3272 at ¶ 224 (1997).

¹⁴ Comments of Caption Colorado at 17.

¹⁵ Joint Comments of Cable Networks at 22.

Adopting new quality rules thus in some cases could cause a reduction in the number of captioned hours of programming.¹⁶

Cable program networks would not be the only ones adversely affected by new caption quality rules. Some captioning agencies suggest that such regulations could cause some of the smaller entrants in the captioning field to leave the business altogether.¹⁷ New liability arising from any FCC regulation, as Media Captioning Services notes, could reduce the funds available to compensate captioners, with dire consequences for some of the smaller players: “ultimately, the number of vendors may contract, and the industry will consolidate to three or four companies who are willing to underwrite the additional indemnification costs. In short order, video programmers from existing to new networks will be faced with a significant rise in per hour costs of captioning, which may very well be the intended objective of certain companies actively pursuing federally mandated closed captioning ‘standards.’”¹⁸ This could lead to even more shortages in available real-time captioners than exist today. These potential negative consequences warrant FCC restraint.

In short, the record simply does not contain convincing evidence of a problem that can or should be remedied through imposing stringent new FCC requirements on the cable industry. Voluntary industry efforts would be better able to establish industry norms for quality

¹⁶ Moreover, the Joint Comments of certain broadcasters note that “imposing quality standards could have the unintended negative consequence of decreasing captioning quality. The Joint Broadcasters have found that at least one of the largest captioning companies recently changed its contracts to make it harder for the captioner to be held accountable for captioning errors due to the Commission’s proposed quality standards.” Joint Comments of Cosmos Broadcasting Corp., Cox Broadcasting, Inc., Media General Communications, Inc., and Meredith Corp. at 9.

¹⁷ See Comments of Caption Colorado at 17-18 (if these increased costs are borne by the captioning organizations, Caption Colorado predicts that “current caption service companies will likely exit the captioning industry and derail the primary objectives of the FCC’s program.”)

¹⁸ Comments of MCS at 17-18.

captioning. And, as has happened before, cable networks will voluntarily choose to replace captioners that fail to provide sufficient quality work with those that do.

The cable industry remains committed to ensuring that cable programming contains high-quality captions. However, government mandates in this area would not achieve that goal.

II. TECHNICAL QUALITY STANDARDS ARE UNNECESSARY

NCTA's comments show that cable operators and programmers routinely check to ensure that their equipment is set up to allow captioning to reach the ultimate viewer. This process works to minimize captioning problems.

Given these existing measures, it is unsurprising that the record reveals few technical problems with the transmission of captioned cable network programming to cable customers. Caption Colorado explains that it “actually logs the amount of downtime it experiences on each of its station or network customers and the percentage of minutes of missed captioning is negligible.”¹⁹ The Joint Comments of Cable Networks show that “captioning is a reliable process” with relatively few technical problems. Indeed, in the Networks’ experience, “technical problems with the distribution of closed captions are no more frequent than other technical glitches that sometimes occur in the distribution of television programming, such as the loss of audio and/or video signals.”²⁰ HBO demonstrates that closed captioning errors account for less than 30 seconds per year.²¹

¹⁹ Comments of Caption Colorado at 29.

²⁰ Joint Comments of Cable Networks at 24.

²¹ HBO Comments at 5.

Some commenters nevertheless argue that cable operators should be required to obtain additional equipment to monitor for captioning problems. For example, WGBH claims that currently available equipment could be used to monitor captioning.²² However, as NCTA's initial comments explained, the typical cable system carries hundreds of channels. None of the equipment described by WGBH is capable of simultaneously monitoring all those analog and digital channels.²³

Other commenters would like the FCC to impose specific requirements on cable operators to immediately remedy captioning concerns. For example, some suggest that operators should be required to install "an alert button on a website that would allow the consumer to generate a trouble ticket that automatically gets sent to the appropriate staff of the network or cable company to notify them of a problem."²⁴ While the desire to have a quick fix to captioning problems is understandable, cable systems are not set up to allow customers to automatically interface directly with their back office systems. As NCTA's initial comments explained, cable operators already provide customers access to system personnel through their customer service operations, which can quickly and reliably address customer concerns. Many cable operators also operate websites that help answer questions and resolve complaints – in some cases, 24 hours a day. Operators must have flexibility to determine how best to meet the needs of their customer base, and the FCC should avoid imposing requirements that would interfere with that needed operational freedom.

²² Comments of the WGBH National Center for Accessible Media at 18 ("WGBH Comments").

²³ For example, the eeg enterprise station monitor can monitor a single channel only. Other products referred to by WGBH can monitor at most 64 analog channels simultaneously.

²⁴ See, e.g., Comments of Alexander Graham Bell Association for the Deaf and Hard of Hearing at 4.

III. THE ELECTRONIC NEWSROOM CAPTIONING RULES SHOULD NOT BE MODIFIED

NCTA's initial comments urged the Commission to retain the policy that enables cable networks with more limited reach to continue to rely on electronic newsroom technique ("ENT") captioning. A variety of commenters confirm that serious negative consequences would flow from any requirement that would force the networks to use real-time captioning to reach their captioning benchmarks.

As several commenters point out, trained real-time captioners are in short supply.²⁵ This shortage will be exacerbated by the increase in the captioning hours that is right around the corner. Extending real-time captioning obligations to even more networks will likely overstrain the existing capacity of skilled real-time captioners.²⁶

Moreover, an expanded real-time captioning obligation would negatively affect smaller cable networks that provide a significant amount of live programming captioned today through cost-effective ENT captioning. Regardless of whether live captioning today costs less than when the FCC first adopted rules,²⁷ there is no dispute that imposing a live captioning obligation on local cable news channels will cause a dramatic increase in captioning costs. For example, in response to Radio-Television News Director Association ("RTNDA")'s member survey, "one

²⁵ See, e.g., Comments of NBC Telemundo License Co. at 10 ("the supply of trained stenocaptioners continues to be insufficient to meet even the current level of demands."); Comments of NCRA at 10 (while government funding to date "has had a positive impact, it is far from adequate to achieve the graduation rates of reporters that are necessary to meet the demands of the 1996 Telecommunications Act.").

²⁶ See, e.g., Comments of MCS at 16 ("As we implement the next benchmark for closed captioning January 1, 2006, (7300 hours per annum) the availability of trained competent captioners will be severely tested.")

²⁷ The record contains mixed evidence about whether those costs have significantly decreased, and whether increases are expected in the future. Joint Comments of Cable Networks at 35 ("The Networks have generally seen their captioning costs rise steadily over the past several years. The Networks anticipate that costs for real-time captioning will increase significantly in 2006, when almost all new English language programming will be required to be captioned, because the supply of qualified captioners will not be able to keep pace with the increase in demand."); NBC Telemundo's Comments show that live captioning remains costly. NBC Telemundo Comments at 12, 13.

local cable news channel explained that a real-time requirement would cause the channel to cease operation.”²⁸ The local cable news network explained that “a real-time requirement would be a significant portion of our operating budget and it would not be practical to offset through staff reductions, the only variable we control.”²⁹ There is no reason to believe this would be an isolated incident. Smaller cable news channels and other cable networks that offer many hours of live captioning would face significantly increased captioning costs on a daily basis if ENT were no longer permissible.

The Commission struck a proper balance in allowing smaller cable networks to continue to count ENT captioning toward compliance with the benchmarks. The record does not support upsetting that balance.

CONCLUSION

For the foregoing reasons and for the reasons stated in NCTA’s initial comments in this proceeding, the Commission should refrain from adopting new captioning requirements.

Respectfully submitted,

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²⁸ RTNDA Comments at 5.

²⁹ Id.